IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 30.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Review Application No.13 of 2006
and
W.P.M.P. No.17188 of 2006

1. Union of India represented by
the Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Southern Railway,
Park Town,
Chennai 600 003.

2. The General Manager,
Southern Railway,
Chennai 600 003.

3. The Senior Divisional
Personnel Officer,
Tiruchirapalli Division,
Southern Railway. ... Applicants

vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

2. M.Sathiamurthy ... Respondents

Review Application under Article 226 of the Constitution of India read with Order XLVII Rule 1 of the Code of Civil Procedure against the order of this Court, passed in special original jurisdiction, dated 11.11.2005, made in W.P. No.36108 of 2005.

For Applicants : Mr.R.Gandhi, Senior Counsel
for Mr.V.G.Sureshkumar.

For Respondent-2 : Mr.S.J.Jagadev.

O R D E R

P.SATHASIVAM, J.

Officers of the Railway Administration are the applicants in this Review Application.

2. The Railway Administration, aggrieved by the order of the Central Administrative Tribunal, Madras Bench, dated 19.07.2005, made in O.A. No.882 of 2004, filed W.P. No.36108 of 2005 before this Court, which was dismissed at the admission stage, confirming the order of the Central Administrative Tribunal.

The second respondent herein, viz., M.Sathiamurthy, joined Railways on 05.01.1979 as Apprentice Mechanic (Junior Engineer Grade-II) against unreserved vacancy through Railway Recruitment Board. At the time of his appointment, he had mentioned his community status as 'Hindu' (not specifically mentioned his caste). Treating him as an unreserved candidate, the Administration promoted him as Junior Engineer Grade-I with effect from 1.8.1982 on ad hoc basis and regularised as such from 1.1.1984. In the meantime, he had produced a Community Certificate issued by the Deputy Tahsildar, Manapparai, claiming that he belongs to Uraly caste, which is coming under ST Community. The administration advised him to obtain Community Certificate from the competent authority. Again, he produced a Community Certificate issued by the Special Tahsildar, Adi-Dravida Welfare, during 1984 and claimed the status of belonging to Scheduled Tribe. Ultimately, he produced a community certificate from the Revenue Divisional Officer, Trichy, during 1997 and the matter was referred to the District Collector, Trichy, to ascertain the genuineness.

In the meantime, the second respondent filed a Suit before the Sub-Court, Trichy, in O.S.No.367 of 2001 for declaration that he belongs to Uraly caste which is coming under ST community and O.A. No.39 of 2002 before the Central Administrative Tribunal, Madras Bench. Subsequently, he withdrew the suit in O.S. No.367 of 2001 on 26.08.2003. The Tribunal, by its order dated 30.04.2002, directed the applicants/Railways to treat the second respondent as a Scheduled Tribe candidate with effect from April 1984 on the basis of the Certificate issued by the Special Tahsildar, Adi-Dravida Welfare. As against the said order, W.P. No.39888 of 2002 was filed before this Court and the same is pending as on date.

In the meanwhile, the second respondent filed another Application before the Tribunal in O.A. No.461 of 2004, praying for a direction to the Railway Administration to promote him to Group "B" service from 1991 and to grant actual benefits etc. The Tribunal disposed of the said Application with a direction to the Railway Administration to consider the representations of the second respondent dated 03.11.2003 and 29.02.2004 in accordance with Rules. Accordingly, those representations were disposed of by the General Manager, Southern Railway, under letter dated 13.07.2004. The second respondent was advised that, due to revision of seniority, he did not find a place within the zone of consideration arrived at three times the number of vacancies for the selection held during the year 1991. Even after applying the relaxed standards as provided in para 203.6 of IREM (Indian Railway Establishment Manual), his name did not come in the extended zone of consideration for Group "B" selection. Aggrieved by the disposal of the representation by which his claims were turned down, the second respondent filed another Original Application, viz., O.A. No.882 of 2004, before the Tribunal, challenging the said disposal and also seeking for a direction to promote him as Foreman Grade "B" from 01.07.1985; Foreman Grade "A" from 01.07.1987; and to grant Group "B" promotion against ST vacancies that arose against 70% regular selection from 1991 or on par with his junior G.Chandrasekaran, who was promoted to Group "B" service with effect from 28.12.1995. The said Original Application was allowed with a direction to the Railways to grant all the monetary benefits to him within a period of three months from the date of receipt of the order copy. Challenging the order of the Tribunal, the second respondent filed W.P. No.36108 of 2005. The only contention raised by the Administration was that the Railway Administration cannot consider the promotion of the second respondent unless his status has been decided by the Committee.

The Tribunal had relied on the provisions pertaining to promotion among Group-C staff which is not applicable to Group "B" □ gazetted posts. The second respondent has to undergo a positive act of selection to be entitled for promotion to the Group-B post of Additional Divisional Mechanical Engineer. The selection consists of written examination and viva voce to be eligible for promotion to the said Group B post. Even as a reserved community candidate, the second respondent is not entitled to any relaxation more so when the post falls under "safety category". The direction of the Tribunal is not only against law but also against the statutory Rules in force. Though a specific stand had been taken to the effect that his promotion to Group-B posts is purely by selection, the same was not considered by the Tribunal as well as this Court, hence, it has become necessary to file the present Review Application.

3. Heard Mr.R.Gandhi, learned Senior Counsel for the applicants/Railway Administration and Mr.S.J.Jagadev for the second respondent.

4. Mr.R.Gandhi, learned Senior Counsel, after taking us through the relevant provisions, would submit that inasmuch promotion to Group-B post is only by selection as per the Rules, mere eligibility will not give any claim or clothe the second respondent with a vested right unless he gets through the selection. Even as a reserved community candidate, the second respondent is not entitled for relaxation, more so, when the post falls under "safety category". He further contended that the direction of the Tribunal is not only against law but also against the statutory rules in force. According to him, when the matter was in adjudication before this Court, the fact viz., the second respondent, even with the benefit of the "ST status" being conferred on him, has to still undergo the process of selection to become eligible to Group-B post; had somehow skipped the notice of this Court, resulting in confirmation of the Order passed by the Tribunal.

5. Mr.S.J.Jagadev, learned counsel appearing for the 2nd respondent, submitted that inasmuch the second respondent was eligible to be promoted to Group-B, the direction was rightly issued by the Tribunal, which was, in turn, correctly confirmed by this Court, thus, there is no valid ground to review the said order.

6. It is made clear that, in this Application, it is unnecessary for us to go into the question as to whether the second respondent belongs to ST Community or not, since the order of the Tribunal, dated 30.04.2002, directing the Administration to treat him as ST candidate with effect from 1984 on the basis of the certificate issued by the Special Tahsildar, Adi Dravida Welfare, is under challenge in W.P. No.39888 of 2002 and the said W.P. is still pending.

7. It is seen that the second respondent, aggrieved by the order, dated 14.07.2002, passed by the General Manager, Southern Railway, Chennai, approached the Central Administrative Tribunal, for quashing of the same and prayed for a direction to the Railway Administration to promote him as Foreman (Grade 'B" promotion) against the ST vacancies that arose against 70% regular selection from 1991 or on par with the date of promotion of G.Chandrasekaran, who was promoted with effect from 28.12.1995, and to grant actual benefits and arrears of salary from the date of promotions. Before the Tribunal, the Railway Administration contended that mere eligibility will not give him any claim for Group-B service and that unless he gets through the selection, he cannot be promoted to the said service.

8. The Tribunal, as rightly pointed out by the learned Senior Counsel appearing for the Railway Administration, without considering the specific stand taken in the reply affidavit that he must come out successful in the selection process in order to make him eligible for Group-B post, committed an error in issuing a positive direction for promoting him to the said post. He also contended that, under the assumption that such stand of the Railway Administration was not projected before the

Tribunal, this Court confirmed the Order passed by the Tribunal, resulting in dismissal of W.P. No.36108 of 2005 in limine by order dated 11.11.2005.

9. Chapter-II Section 'A' of IREM relates to Rules governing promotion of Subordinate Staff. Rule 201.1 being relevant, the same is extracted here-under,

" 201.1. All vacancies in Group 'B' are filled by promotion on the basis of selection of eligible Group 'C' employees and also on the basis of Limited Departmental Competitive Examination, wherever the scheme is in force. Where the scheme of LDCE is in force, selection is held to fill 75% (now 70%) of the vacancies and LDCE is held to fill the remaining 25% (now 30%) of the vacancies."

Rule 204.1 speaks about 'selection procedure' and the relevant portion therein reads as follows:-

" 204.1. Selection Procedure.-- The selection is based on a written test to adjudge the professional ability, vivavoce and assessment of records by the Selection Committee..... "

10. It is not in dispute that the second respondent approached the Tribunal on the ground that he was not promoted to Group-B post. In the reply affidavit filed before the Tribunal, the Railway Administration has specifically stated that mere eligibility alone will not give him any claim for Group-B service and that unless he gets through the selection, he cannot be promoted. Though the same was noticed by the Tribunal, as rightly pointed out, the Tribunal committed an error in issuing a positive direction to consider his claim for promotion by treating him as ST candidate. As rightly pointed out, the said aspect was not taken note of by the Division Bench also, resulting in dismissal of the Writ Petition on 11.11.2005.

11. Rules 201 to 204 of IREM volume I, governing promotion of subordinate staff, make it clear that promotion of Group-B posts are by selection of eligible Group-C employees and also on the basis of Limited Departmental Competitive Examination. Those Rules also provide elaborate procedure for frequency of selection; composition of selection committee; assessment of vacancies; reservation in favour of SCs/STs; conditions of eligibility; zone of consideration; selection procedure etc.

12. Though Mr.S.J.Jagadev vehemently contended that the second respondent was eligible to be promoted to Group-B post, as rightly pointed out by the learned Senior Counsel for the Railway Administration, mere eligibility will not give any claim for Group-B vacancies unless he gets through the selection.

13. As observed earlier, in order to get promotion to Group-'B' post, one has to get through the selection process and come out successful in the Written examination and viva voce. Further, a perusal of the Rules clearly show that even a reserved community candidate is not entitled to any relaxation and he would become eligible for promotion only if he is successful both in the written examination and in the viva voce. On the second respondent undergoing and coming out successful in the selection, he will be considered for promotion to Group-B post. It is brought to our notice by the Railway Administration that the second respondent had also appeared twice in the written examination for promotion to the said post, however, he was not successful. We are satisfied that the direction of the Tribunal, which was made without considering the specific objection raised by the Railway Administration, to promote the second respondent is against the statutory rules in force. As rightly pointed out, this aspect had not been taken into consideration by this Court while dismissing the Writ Petition in limine. We find that the Tribunal had relied upon the provisions pertaining to promotion among Group-C staff which are not applicable to Group-B (gazetted posts). We have already observed that even a SC/ST candidate has to undergo the selection process.

14. In view of the specific stand taken in the reply affidavit even before the Tribunal and Rules 201 to 204 of IREM, governing promotion of subordinate staff; as pointed out in 2003 2 SCC 111 (Bhavnagar University v. Palitana Sugar Mill (P) Ltd.), the proper remedy for the affected party would be to file a Review before the appropriate court. In the light of the materials placed, we are satisfied that the present Review by the Railway Administration is the appropriate remedy and we accept their stand.

15. In the light of the above discussion, we hold that mere eligibility alone will not give the second respondent any claim for group-B service and that unless he gets through the selection process, he cannot be promoted to group-B service. We further hold that the second respondent has to undergo and come out successful in the selection and no relaxation is permissible in view of the various Rules in force.

The Review Application is allowed as we see an error apparent on the face of the record, in that, the specific stand taken by the Railways in the light of the statutory provisions, relating to promotion to Group-B posts, had not been considered by the Central Administrative Tribunal and was not taken note of by this Court. No costs. Connected Miscellaneous Petition stands closed.

JI.

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

[PRV/7748]